

# EXHIBIT 4

Law Office

July 6, 2015

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**VIA ELECTRONIC MAIL**

Universal Service Administrative Company  
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Attention: Letter of Appeal/RHC  
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**RE: Appeal of Recovery Action for FRNs 64723, 68296, 41446, and 63145.**

HCP Name and Number	Iowa Rural Health Telecommunications Program 17226 (Iowa Hospital Association)
Funding Request Numbers	64723, 68296, 41446, 63145
Vendor	State of Iowa, Iowa Telecommunication & Technology d/b/a Iowa Communications Network (SPIN: 143003005) and Access Integration Specialists (SPIN: 143033620)
Funding Year	2009
RHC Program	Pilot Program
Contact Information:	Arthur Spies Iowa Rural Health Telecommunications Program 100 East Grand Avenue Suite 100 Des Moines, IA 50309-1835 (515) 288-1955 (phone) (515) 283-9366 (fax) <a href="mailto:SPIESA@ihaonline.org">SPIESA@ihaonline.org</a>

**To Whom It May Concern:**

The Iowa Rural Health Telecommunications Program ("IRHTP"), through its attorneys, and pursuant to sections 54.719 and 54.720 of the rules of the Federal Communications Commission ("Commission")<sup>1</sup> hereby appeals the determinations of the Rural Health Care ("RHC") Division of the Universal Service Administrative Company ("USAC") with regard to Funding Request Numbers ("FRNs") 64723, 68296, 41446, and 63145<sup>2</sup> for the 2009 funding year. IRHTP respectfully requests review of the findings

<sup>1</sup> 47 C.F.R. §§ 54.719-54.720 (2014).

<sup>2</sup> FRN 41446 relates to RFP 09-002 (USAC RFP # 02) ("QA Services RFP-1"). FRN 63145 relates to RFP 12-004 (USAC RFP #05) ("QA Services RFP-2").

relating to possible violation of competitive bidding requirements which are not supported by the operative facts.

USAC's determinations on these four FRNs are set forth in two Commitment Adjustment Letters, both dated May 6, 2015.<sup>3</sup> In support of USAC's decision to adjust its funding commitment levels and seek recovery, both letters state: "Recovery sought pursuant to Audit RH2013PP018 ["USAC Audit"] competitive bidding violation audit finding," which refers to "Service provider involvement in Beneficiary's competitive bidding process."<sup>4</sup> One of these letters was issued to Access Integration Specialists ("AIS"). USAC seeks recovery from AIS in the amount of \$142,290.00 in connection with FRN 41446 and \$8,160.00 in connection with FRN 63145.<sup>5</sup> The other letter was issued to the State of Iowa, Iowa Telecommunication & Technology d/b/a Iowa Communications Network ("ICN"). USAC seeks recovery from ICN in the amount of \$28,517.50 in connection with FRN 64723, and for \$350,180.03 in connection with FRN 68296.<sup>6</sup> Collectively, the letters seek recovery from these two IRHTP vendors in the amount of \$529,147.53. The USAC Audit cited in these letters as the basis for seeking recoupment makes four different findings. IRHTP appeals a single one that has an adverse financial significance; that is the finding that there was "service provider involvement in IRHTP's competitive bidding process."<sup>7</sup>

The IRHTP has not violated any of the Commission's rules or policies in its competitive bidding processes. As presented in this appeal, IRHTP screened participation in Requests for Proposals ("RFPs") and bidding decisions appropriately so as not to provide any vendor, including AIS, with any competitive advantage or inside information with regard to the RFPs for Quality Assurance Inspection Services ("QA Services RFP-1"<sup>8</sup> and "QA Services RFP-2"<sup>9</sup>). Similarly, IRHTP did not violate the Commission's articulated competitive bidding rules or policies in its processes for awarding the Meshed Ethernet Bandwidth Connectivity ("Connectivity RFP").<sup>10</sup> As to

<sup>3</sup> See Letter from Rural Health Care Division, USAC, to Angela Schneider, Iowa Communications Network (May 6, 2015) ("ICN Adjustment Letter") (Attachment 1); Letter from Rural Health Care Division, USAC, to Tony Crandell, Access Integration Specialists (May 6, 2015) ("AIS Adjustment Letter") (Attachment 2).

<sup>4</sup> ICN Adjustment Letter at 3-4; AIS Adjustment Letter at 3-4.

<sup>5</sup> See AIS Adjustment Letter at 3-4.

<sup>6</sup> See ICN Adjustment Letter at 3-4.

<sup>7</sup> USAC, Independent Auditor's Report on Iowa Rural Health Telecommunications Program's Compliance with Rural Health Care Pilot Program Rules (USAC Audit No. RH2013PP018), at 2 (Sept. 5, 2014) ("USAC Audit") (Attachment 3). The remaining findings, which IRHTP does not appeal, are (1) that "Pilot Program support [was] used to fund ineligible participants" (USAC Recovery Action of \$78,828); (2) that the IRHTP "certified and service provider submitted invoices to USAC prior to collecting payment for the minimum 15 percent contribution from the [IRHTP]" (USAC Recovery Action of \$0); and (3) that IRHTP "did not notify USAC and [the Commission] that the network project was not initiated within six months of the Funding Commitment Letter" (USAC Recovery Action of \$0). USAC Audit at 2.

<sup>8</sup> FRN 41446 (USAC RFP #02).

<sup>9</sup> FRN 63145 (USAC RFP #05).

<sup>10</sup> FRNs 64723 and 68296 (USAC RFP #04).



all potential vendors, including those ultimately awarded contracts, IRHTP had controls in place to ensure that no party was provided any asymmetric informational benefit or competitive advantage in connection with the contracts for which they chose to bid. To the extent that USAC reviews the material presented here and disagrees with this conclusion, it must articulate its reasoning and factual analysis with far greater specificity than the broad brush, conclusory statements contained in the USAC Audit. IRHTP requests that USAC review the information IRHTP provides here and reverse its findings that led to its flawed decision to recover funds in connection with FRNs 64723, 68296, 41446, and 63145.<sup>11</sup>

**I. IRHTP DID NOT PROVIDE AIS WITH ANY COMPETITIVE ADVANTAGE AS A VENDOR.**

**A. Mr. Crandell Possessed No Knowledge of the QA Services RFPs Unavailable To Other Prospective Bidders.**

The USAC Audit findings as to the Quality Assurance (“QA”) RFPs hinge on assumptions that are demonstrably incorrect. For example, USAC concludes that “Mr. Crandell had knowledge that was not available to other providers (e.g., competing providers’ pricing and information about IRHTP’s competitive bidding processes) because of his involvement in the [Outside Fiber RFP]” and that “the Beneficiary’s screening of Mr. Crandell from [the QA Services RFPs] did not prevent AIS from having a competitive advantage when it bid on [these two RFPs].”<sup>12</sup> This statement relies upon a misunderstanding of a number of critical facts. Once those erroneous assumptions have been corrected, it is apparent on its face that Mr. Crandell and his company, AIS, were not provided information that was unavailable to other prospective bidders as to the QA Services RFPs and thus, AIS did not have any unfair advantage in connection with bidding on these RFPs.

First, the Outside Fiber RFP (the first RFP IRHTP issued with a quality assurance component) and the later issued QA Services RFPs took completely different approaches to the services being requested.<sup>13</sup> The USAC Audit failed to recognize or review this salient point. Specifically, the Outside Fiber RFP was much broader in scope and

<sup>11</sup> The IRHTP filed a related appeal with USAC on June 29, 2015, requesting that USAC reverse its decision and grant the IRHTP’s FRN 13422321 as well as subsequent “evergreen” circuit fee FRNs or hold its determination in abeyance pending the outcome of this appeal. See Letter of Appeal from IRHTP, to Rural Health Care Division, USAC (June 29, 2015) (“IRHTP Letter of Appeal”) (Attachment 4). As set forth in the June 29 IRHTP Letter of Appeal, FRN 13422321 is related to the Connectivity RFP, which is addressed at length herein.

<sup>12</sup> USAC Audit at 23.

<sup>13</sup> See Affidavit of Anthony Crandell at 3–4 (June 29, 2015) (“Crandell Aff.”) (Attachment 5); Notice to Vendors, Request for Proposal IRHTP RFP 09-002, at 12 (2009) (“QA Services RFP-1”) (Attachment 6); Notice to Vendors, Request for Proposal IRHTP RFP 08-001, at 3, 16–20 (2008) (“Outside Fiber RFP”) (Attachment 7).



included a quality assurance investigation task as one component for the overall fiber build-out bids requested.<sup>14</sup> This QA component of the Outside Fiber RFP project specifically required as an essential element the presence of an individual at each build-out site to ensure safety and security protocols in addition to quality review to ensure that everything relating to the fiber build-out was done consistently with industry standards.<sup>15</sup> However, the RFP was not at all specific in designating the amount or type of quality assurance work being solicited.<sup>16</sup> Likely because bidders were not provided enough information about IRHTP's specific envisioned tasks for QA, the submitted bids for this QA component of the Outside Fiber RFP far exceeded available grant funds.<sup>17</sup> Because none of the bids for this QA effort were within the IRHTP's budget, the bids were never substantively evaluated.<sup>18</sup>

Thus, while Mr. Crandell assisted IRHTP in drafting the Outside Fiber RFP, there was no substantive evaluation of or discussion about the actual vendor offers received by IRHTP, beyond a threshold review of the price points that were prohibitively high, that would arguably have provided Mr. Crandell with useful information about how he might structure a future successful bid on later RFPs that were different in scope and content.<sup>19</sup> Mr. Crandell was not privy to any discussion with respect to the shortcomings of the offers received because, given the offers received, there was no substantive evaluation or review or discussion of these bids.<sup>20</sup> The IRHTP Steering Committee instead determined that the project would be better served by putting the QA aspect aside and of refocusing a request for QA services in a more narrow fashion so as to obtain actionable bids at a later date.<sup>21</sup>

Having learned through the Outside Fiber RFP process that the QA services sought could be less extensive than originally thought given the undertakings and experience of the vendors who were awarded Outside Fiber contracts, IRHTP decided that it would take a different approach to competitively bidding the QA services. Thus, the QA Services RFP-1 identified the number of sites and hours of work anticipated at each site.<sup>22</sup> In response to this specified scope of work, bidders were asked to provide their "burdened" hourly rate that would essentially be a fixed fee for service.<sup>23</sup> That was

<sup>14</sup> See Outside Fiber RFP at 3, 16–20. See also IRHTP Response to USAC Audit Findings, Affidavit of Arthur Spies at 1 (Oct. 3, 2014) ("Spies Aff.") (Attachment 8A).

<sup>15</sup> See Outside Plant Fiber RFP at 3, 16–20.

<sup>16</sup> See Crandell Aff. at 3–4; Outside Fiber RFP at 16–20.

<sup>17</sup> See Minutes of IRHTP Steering Committee, Nov. 12, 2008, at 1–2 (Attachment 9); Spies Aff. at 1; Affidavit of Scott Curtis at 2 (July 6, 2015) ("Curtis Aff.") (Attachment 10).

<sup>18</sup> Crandell Aff. at 3, 5; Curtis Aff. at 2.

<sup>19</sup> See Crandell Aff. at 2; Curtis Aff. at 2; Minutes of IRHTP Steering Committee, Nov. 12, 2008, at 1–2.

<sup>20</sup> See Curtis Aff. at 2; Spies Aff. at 1; Minutes of IRHTP Steering Committee, Nov. 12, 2008, at 1–2.

<sup>21</sup> See Curtis Aff. at 2; Minutes of IRHTP Steering Committee, Nov. 12, 2008, at 1–2.

<sup>22</sup> See QA Services RFP-1 at 12–18.

<sup>23</sup> QA Services RFP-1 at 12.



the substance of the bid proffer.<sup>24</sup> The RFP was more specific and limited in scope, stating that the entity awarded the contract was to perform “spot-checking,” problem resolution, site coordination and to complete the link-up checklists.<sup>25</sup> The QA Services RFP-2 sought bids for these same services for a small number of additional locations that came into the program later.<sup>26</sup> In other words, the scope and evaluation criteria for the RFPs and the vendor outputs were completely different than the failed attempt in the Outside Fiber RFP to procure QA services.

Given the completely different approaches used in the Outside Fiber RFP and the later QA Services RFPs,<sup>27</sup> Mr. Crandell’s prior experience in assisting with the drafting of the Outside Fiber RFP was of no relevance and conferred no competitive advantage upon him.<sup>28</sup> And, the other company that presented a bid for the QA Services RFP-1, Adesta, was actually familiar with the Outside Fiber RFP, having in fact presented a bid in response to the QA services section of the Outside Fiber RFP.<sup>29</sup> Furthermore, as stated on the QA Services RFP-1 document itself, the Outside Fiber RFP was “available on CD per request (for reference only).”<sup>30</sup> Accordingly, at any point after the QA Services RFP-1 was issued, any interested party could review the prior Outside Fiber RFP to the extent they deemed it to be relevant. By virtue of Mr. Crandell’s professional work experience, Mr. Crandell and his company, AIS, were very knowledgeable about how to provide fiber QA services.<sup>31</sup> But AIS and Mr. Crandell certainly did not possess “knowledge that was not available to other providers.”<sup>32</sup>

Second, as explained in more detail below, once Mr. Crandell expressed the sentiment that AIS could potentially have an interest in bidding on a future quality assurance RFP at the point where the IRHTP Steering Committee determined there was

<sup>24</sup> See Crandell Aff. at 3–4, *citing* QA Services RFP-1 §§ 3.1, 3.8, and 3.13 (describing the burdened hourly rate requirements) and QA Services RFP-1 at Annex A (providing a model form for all bidders to complete).

<sup>25</sup> QA Services RFP-1 at 12; IRHTP Response to USAC Audit Findings, Connectivity Services Supporting Documentation, Minutes of IRHTP Steering Committee Conference Call, May 14, 2009, at 1 (Attachment 8B).

<sup>26</sup> IRHTP Response to USAC Audit Findings, Quality Assurance Supporting Documentation, Memorandum from Arthur Spies to IRHTP Steering Committee, “June 20, 2012 Conference Call Summary” (June 21, 2012) (Attachment 8C). *See also* Crandell Aff. at 3–4.

<sup>27</sup> Crandell Aff. at 3–4.

<sup>28</sup> Crandell Aff. at 3–4.

<sup>29</sup> *See* E-Mail from Arthur Spies, IRHTP, to Lee Fintel, Adesta LLC (July 8, 2009) (Attachment 11); IRHTP Response to USAC Audit Findings, Quality Assurance Supporting Documentation, Memorandum from Arthur Spies, IRHTP, to IRHTP Steering Committee, “Evaluation, Scoring QA Inspection Proposals” (Sept. 16, 2009) (“Sept. 16, 2009 QA Services Memorandum”) (Attachment 8C). Adesta was also familiar with other aspects of the IRHTP project, having successfully bid on a contract for fiber installation. *See* E-Mail from Joel Mulder, Adesta LLC, to Arthur Spies, IRHTP (July 8, 2009) (Attachment 12).

<sup>30</sup> QA Services RFP-1 at 2. *See* Crandell Aff. at 4; Curtis Aff. at 3.

<sup>31</sup> Crandell Aff. at 1–2.

<sup>32</sup> *See* USAC Audit at 23.



no point in evaluating the bids received for the Outside Fiber RFP QA component,<sup>33</sup> Mr. Crandell was entirely excluded from any further QA discussion or processes. Specifically, he was screened from the development of both the QA Services RFPs and the evaluation of the bids, and he did not participate in the discussion that ultimately resulted in the award to AIS of each of the two fixed fee contracts under review.<sup>34</sup> This action was consistent with the guidance Mr. Spies sought and received from USAC as to whether Mr. Crandell and his company would be precluded from future, different quality assurance RFP participation by virtue of participating in the earlier drafting of the Outside Fiber RFP given that it included a quality assurance component that was not ultimately awarded and given what turned out to be an impractical scope for the QA tasks.

It is true that Mr. Crandell “continued to work with IRHTP and Mr. Spies on the other RFPs” that IRHTP was drafting and evaluating.<sup>35</sup> However, USAC has not articulated the view that working on unrelated RFPs could or should provide a party with an unfair competitive advantage for an RFP from which the party was entirely screened. Moreover, Mr. Crandell was not involved in any manner with the IRHTP Federal Communications Commission Pilot Program application,<sup>36</sup> so there was nothing he could have taken from that experience—which he did not have—to taint the QA bidding process or results.

**B. Mr. Spies’ Failure to Include Mr. Crandell in Initial USAC Disclosures Was an Oversight that Was Corrected.**

USAC’s finding that IRHTP “did not disclose that Mr. Crandell and AIS assisted with developing and evaluating the received bids for [the Outside Fiber RFP]”<sup>37</sup> is of course only partially correct. Mr. Crandell was not involved in evaluating the portion of the bids received on QA, because as explained above, those bids were not substantively evaluated. However, the failure to mention Mr. Crandell’s involvement in the RFP drafting does reflect an initial oversight by Mr. Spies that was remedied in IRHTP’s responses in connection with the USAC Audit.<sup>38</sup> It does not, however, demonstrate that

<sup>33</sup> See Spies Aff. at 1–2.

<sup>34</sup> See Spies Aff. at 1–2; Crandell Aff. at 4–5.

<sup>35</sup> Crandell Aff. at 4. Besides the Outside Plant Fiber RFP, Mr. Crandell assisted Mr. Spies and the IRHTP with the following RFPs: RFP 08-002 (USAC RFP #01) (Network and Site Electronics); RFP 10-001 (USAC RFP #03) (Broadband Lit services); RFP 12-004 (USAC RFP #05) (only with respect to Outside Plant Fiber and Network Electronics sections; Mr. Crandell was excluded from the Quality Assurance Inspection Services section); and the Meshed Ethernet Bandwidth Connectivity RFP. See Crandell Aff. at 2, 5.

<sup>36</sup> Crandell Aff. at 2.

<sup>37</sup> USAC Audit at 23.

<sup>38</sup> See, e.g., Memorandum from Arthur Spies, IRHTP, to USAC Internal Auditors, “Responses to Competitive Bidding Process Questions,” at 1 (Mar. 11, 2014) (Attachment 13) (while this memorandum suggests that the Outside Fiber RFP was evaluated, the bids submitted for the QA component were never actually evaluated in substance or scored, as previously discussed).

AIS received any competitive advantage or asymmetric information on how IRHTP would evaluate any future QA services RFPs or bids that other potential bidders did not have for the reasons provided above.

Mr. Spies complied with the Commission's rules and policies to the best of his abilities and in good faith. While the IRHTP realizes, in hindsight, that Mr. Spies' initial written disclosures to USAC regarding the Outside Fiber RFP could have been more complete, USAC should not infer any intent to obscure Mr. Crandell's participation in the RFP from Mr. Spies' mistake, especially in light of Mr. Spies' communication with USAC Coach Ms. Sheldon throughout the process.<sup>39</sup>

AIS was awarded the QA Services RFP-1 fixed fee contract because it provided the most cost-effective bid, based on objective factors.<sup>40</sup> There were no other bids in response to the QA Services RFP-2, likely because the services requested were identical to those requested in the first RFP, but only as to an additional four sites, beyond the original sites.<sup>41</sup> AIS' bid providing a burdened hourly rate for the second RFP was for the same price per site as for the first RFP.<sup>42</sup>

Thus, AIS did not have any inside information that conferred any competitive advantage on it in connection with the QA Services RFPs it participated in as a vendor and which it was awarded a contract. The USAC Audit does not demonstrate otherwise. In the absence of any evidence to support its finding, USAC's determination as to FRNs 41446 and FRN 63145 must be reversed.

<sup>39</sup> See Crandell Aff. at 3, Cf. Curtis Aff. at 3 ("My understanding from reports from Mr. Spies to the Steering Committee is that Mr. Spies was in frequent communication with a 'coach' at USAC throughout the process and took guidance from USAC to ensure compliance with IRHTP's obligations under the Pilot Program").

<sup>40</sup> See QA Services RFP-1 at Annex F; Sept. 16, 2009 QA Services Memorandum. See also Spies Aff. at 2. AIS was the most "cost-effective" provider, as required by the Commission, *Rural Health Care Support Mechanism*, WC Docket 02-60, Order, 22 FCC Red 20360, 20395-401, ¶ 70, 78-79 (2007) ("2007 Pilot Program Selection Order"). See Curtis Aff. at 3. AIS also scored higher than Adesta on the price and invoicing objective factors for review. See Sept. 16, 2009 QA Services Memorandum.

<sup>41</sup> See IRHTP Response to USAC Audit Findings, Quality Assurance Supporting Documentation, Memorandum from Arthur Spies, IRHTP, to FCC/USAC, "Evaluation, Scoring and Awards for IRHTP RFP 12-004" (June 21, 2012) ("June 21, 2012 QA Services RFP-2 Scoring Memorandum") (Attachment 8C). AIS' bid for the second RFP was nonetheless identical on a per-site basis.

<sup>42</sup> See Spies Aff. at 2-3; Crandell Aff. at 5.



## **II. IRHTP DID NOT VIOLATE PILOT PROGRAM COMPETITIVE BIDDING REQUIREMENTS WITH ITS CONNECTIVITY RFP AND AWARD PROCESS.**

### **A. Mr. Crandell and AIS Are Not Consultants to the ICN.**

The USAC Audit states that while “(a) the Beneficiary competitively bid the Ethernet services and ICN was the only bidder under the procurement; (b) ICN was uniquely situated to provide the most expansive network and services along with the best rates as the State of Iowa’s fiber optic network; (c) ICN already possessed sufficient knowledge of the network’s current topology and configuration as the preexisting Ethernet services provider to HCPs participating in the project; and (d) no result other than the selection of ICN would have been economically and technically rational, the [Commission]’s rules do not allow consultants for service providers to participate in competitive bidding, and the recovery of funds as recommended by [the Internal Audit Division (“IAD”)], is required by the rules.”<sup>43</sup> USAC’s audit finding misunderstands the actual relationship between Mr. Crandell, AIS and the ICN. Mr. Crandell and his company, AIS, are not consultants to the ICN and thus, USAC must reevaluate the basis for its conclusion as it is factually inaccurate.

The term “consultant” is not defined in the Commission’s rules or in the guidance orders for the Pilot Program.<sup>44</sup> However, the USAC Glossary of Terms for the Rural Health Care Program provides that a “consultant” is:

A company or individual (non-employee of the entity) selected to perform certain activities related to the application process on behalf of the application or service provider for a fee. A Letter of Agency (LOA) or consultant agreement must be in place before the consultant undertakes these activities.<sup>45</sup>

While Mr. Crandell is a former ICN employee, he has not worked for ICN since 2002.<sup>46</sup> Once he left the employment of ICN, he formed his own sole proprietor business, AIS, and worked for several companies on an independent contractor basis.<sup>47</sup> In 2006, the ICN and AIS entered into a three-year contract under which AIS was

<sup>43</sup> USAC Audit at 25.

<sup>44</sup> See, e.g., 47 C.F.R. § 54.1 *et seq.* (Universal Service General Information, Terms & Definitions); 47 C.F.R. § 54.600 (Universal Service Support for Health Care Providers, Terms & Definitions); 47 C.F.R. § 54.603 (Competitive Bidding and Certification Requirements); *2007 Pilot Program Selection Order*.

<sup>45</sup> USAC, Rural Health Care Program, *Glossary of Terms*, <http://www.usac.org/res/documents/rhc/pdf/handouts/RHC-Glossary-of-Terms.pdf> (last visited July 6, 2015). He is also not an employee under the terms of the contract with ICN. See Crandell Aff. at 1–3.

<sup>46</sup> Affidavit of Ric Lumbard at 1 (July 1, 2015) (“Lumbard Aff.”) (Attachment 14).

<sup>47</sup> Crandell Aff. at 1–2.

contracted to perform project management services as needed and requested by ICN.<sup>48</sup> The AIS relationship to ICN was one of an independent contractor, not a consultant.<sup>49</sup>

Moreover, Mr. Crandell did not perform any activities related to the Commission's Pilot program application process on behalf of the ICN or IRHTP.<sup>50</sup> Neither did he draft or evaluate any of the bids tendered for the RFPs he developed or reviewed<sup>51</sup> in his capacity as an independent contractor for ICN, nor work on any ICN network design provided as a vendor to IRHTP.<sup>52</sup> There was no "dual involvement in the bidding process."<sup>53</sup> Mr. Crandell's role with the ICN was and is limited to providing occasional independent management services such as the routing and installation of fiber on a project-by-project basis.<sup>54</sup> No letter of agency or consultant agreement is in place between Mr. Crandell and/or his company, AIS, and the ICN.<sup>55</sup> Mr. Crandell therefore cannot be considered a consultant for ICN as to any USAC RFP or bidding process.

Given the nature of his work relationship with ICN and his particular expertise, Mr. Crandell also never exercised control or influence over any strategic or business decision by ICN. Both Mr. Crandell and ICN have stated that Mr. Crandell's independent contractor work for ICN did not influence the drafting or the evaluation of the RFPs with which Mr. Crandell was involved.<sup>56</sup> Specifically, ICN has attested that Mr. Crandell "has no input into ICN's decisions except insofar as offering his technical conclusions as to the discrete projects that he has been contracted to work on" and no ongoing consultative role with the ICN.<sup>57</sup> Given all this, there is no nexus that can be demonstrated between his unrelated independent contractor project management work for ICN and his role in assisting IRHTP on some, but not all of its RFPs.

The IRHTP recognizes that Mr. Spies' occasional inconsistent characterizations of Mr. Crandell in his communications with USAC, while representative of Mr. Spies' good faith efforts to comply with the relevant disclosure requirements, may have

<sup>48</sup> *Id.*

<sup>49</sup> Crandell Aff. at 1-3; Lumbard Aff. at 1.

<sup>50</sup> See Crandell Aff. at 1-2.

<sup>51</sup> Mr. Crandell was involved with the following requests for proposals: RFP 08-001 (USAC RFP #00) ("Outside Fiber RFP"); RFP 08-002 (USAC RFP #01) (Network and Site Electronics); RFP 10-001 (USAC RFP #03) (Broadband Lit services); RFP 12-004 (USAC RFP #05) (only with respect to Outside Plant Fiber and Network Electronics sections); and the Connectivity RFP. See Crandell Aff. at 2, 5.

<sup>52</sup> See Crandell Aff. at 3, 5, 6.

<sup>53</sup> *Cf. Requests for Review of Decisions of the Universal Service Administrator by Greeley Public School District, Greeley, NE et al.*, CC Docket No. 02-6, Order, 28 FCC Rcd 6898, 6900 (May 24, 2013) ("Greeley") (stating, in the Schools and Libraries Program context, that an employee acting on behalf of the school and on behalf of the bidder constituted improper service involvement and violated the program rules).

<sup>54</sup> See Lumbard Aff. at 1-2.

<sup>55</sup> Lumbard Aff. at 2.

<sup>56</sup> See Crandell Aff. at 5-6; Affidavit of David Swanson at 2 (July 1, 2015) ("Swanson Aff.") (Attachment 15).

<sup>57</sup> Lumbard Aff. at 1-2.



unintentionally contributed to some confusion regarding Mr. Crandell's role in the competitive bidding process with respect to the RFPs for which the USAC Audit found there to be issues.<sup>58</sup> However, as USAC also recognized, the IRHTP ensured that everyone at the ICN who was in a position to potentially taint the competitive bidding process was excluded from the development of the RFP, the bid selection and award process relating to the Connectivity RFP.<sup>59</sup>

Understanding that Mr. Crandell and his company, AIS, are not consultants to the ICN, and performed no work for the ICN in connection with the Connectivity RFP in an independent contractor capacity or otherwise requires that USAC review its prior conclusions. Mr. Crandell and his company, AIS, were in no position to taint the competitive bidding process with regard to the Connectivity RFP. Thus, USAC's decision to seek recovery in connection with FRNs 64273 and 68296 must be reversed.

**B. All Relationships Between All the Relevant Parties in Connection with the Connectivity RFP Were Disclosed to USAC.**

IRHTP disclosed all third parties who participated in drafting and reviewing the Connectivity RFP.<sup>60</sup> While USAC agrees that the IRHTP took steps to ensure that ICN employees were excluded, USAC appears to take issue with the fact that the IRHTP "neglected to disclose the relationship" between Mr. Crandell and the ICN.<sup>61</sup> This is apparently based on the erroneous inference that Mr. Crandell worked on the Connectivity RFP as a consultant to ICN while later assisting IRHTP in that same bid evaluation and selection process. This inference is incorrect.

Mr. Crandell and his company, AIS, were not consultants for ICN and did not assist ICN in any way with its Connectivity RFP bid.<sup>62</sup> Rather, as disclosed by IRHTP, Mr. Crandell was assisting IRHTP and was screened from ICN so that he was able to provide "independent technical expertise that adequately identified the needs of the

<sup>58</sup> Compare, e.g., IRHTP Response to USAC Audit Findings, Disclosures Supporting Documentation, Memorandum from Arthur Spies to USAC/FCC, "Evaluation, Scoring and Award for IRHTP RFP 10-001" (Apr. 11, 2011) ("April 11, 2011 Memorandum") (Attachment 8D) with IRHTP Response to USAC Audit Findings, Disclosures Supporting Documentation, Memorandum from Arthur Spies, IRHTP, to Barbara Sheldon, USAC, "Disclosures" (Apr. 19, 2012) ("April 19, 2012 Memorandum") (Attachment 8D).

<sup>59</sup> USAC Audit Report at 25.

<sup>60</sup> See April 19, 2012 Memorandum; IRHTP Response to USAC Audit Findings, Connectivity Services Supporting Documentation, Memorandum from Arthur Spies, IRHTP, to IRHTP Steering Committee, "May 29, 2012 Conference Call Summary" (May 29, 2012) ("May 29, 2012 Conference Call Summary") (Attachment 8B); Memorandum from Arthur Spies, IRHTP, to USAC Internal Auditors, "Responses to Competitive Bidding Process Questions," at 1 (Mar. 11, 2014) (Note that the chart on the first page of the memorandum mistakenly refers to the QA Services RFP-2 as USAC RFP#04, when it should be USAC RFP #05. The Connectivity RFP is mistakenly referred to as USAC RFP #05 when it should be USAC RFP#04. The chart on the second page of this document is correct).

<sup>61</sup> USAC Audit Report at 25.

<sup>62</sup> See Crandell Aff. at 5-6; Lombard Aff. at 2.



project” for the IRHTP.<sup>63</sup> Mr. Spies disclosed to USAC that Mr. Crandell developed the Connectivity RFP, which Mr. Spies reviewed.<sup>64</sup> No other parties were involved in the development or review of this RFP.<sup>65</sup>

### **III. SUFFICIENT CONTROLS WERE IN PLACE TO ENSURE NO COMPETITIVE ADVANTAGE WAS CONFERRED UPON ANY VENDOR.**

The USAC Audit concurred with the USAC IAD that the IRHTP “did not sufficiently demonstrate or provide supporting documentation that sufficient controls were in place ensuring that ICN and AIS were not provided a competitive advantage when the companies submitted their own bids for certain RFPs.”<sup>66</sup> There are a number of problems with this broad and unsupported conclusion of insufficiency that require USAC review on appeal.

First, the Commission orders adopting program rules and cited by USAC discuss the need to keep potential vendors at “arm’s-length” both during the RFP formulation and the vendor selection process.<sup>67</sup> Sections 54.603 and 54.615 of the Commission’s rules require eligible health care providers to participate in a competitive bidding process for obtaining services and follow “any additional applicable state, local, or other procurement requirements to select the most cost-effective provider of services eligible for universal service support under the RHC support mechanism.”<sup>68</sup> Among other things, Pilot Program participants must certify that they have selected the most cost-effective method of providing service.<sup>69</sup> To ensure a fair and “arm’s-length” process, service providers participating in the competitive bid process are prohibited from assisting with or filling out a selected participants’ FCC Form 465 for services they are competing to provide,<sup>70</sup> and applicants must “identify, when they submit their Form 465, to USAC and the Commission any consultants, service providers, or any other outside experts, whether

<sup>63</sup> Crandell Aff. at 5.

<sup>64</sup> See April 19, 2012 Memorandum. See also IRHTP Response to USAC Audit Findings, Connectivity Services Supporting Documentation, Memorandum from Arthur Spies to IRHTP Steering Committee, “Evaluation Scoring IRHTP [FRNs 64723 and 68296 (USAC RFP #04)] Meshed Ethernet Bandwidth and Connectivity Proposal” (May 29, 2012) (“May 29, 2012 Memorandum”) (Attachment 8B).

<sup>65</sup> See April 19, 2012 Memorandum; May 29, 2012 Memorandum. Prior to this point, Mr. Spies had identified Mr. Crandell as having a professional relationship with the ICN in writing in an April 11, 2011 disclosures memorandum in connection with a different RFP. See April 11, 2011 Memorandum. Note that, as discussed in this Letter of Appeal, while Mr. Spies mistakenly referred to Mr. Crandell as an “ICN Consultant” in that memorandum, Mr. Crandell is an independent contractor and not a “consultant” as defined by USAC.

<sup>66</sup> USAC Audit at 25.

<sup>67</sup> See, e.g., 2007 Pilot Program Selection Order, 22 FCC Rcd at 20412, ¶ 100; 47 C.F.R. §§ 54.603(a), 54.615(a) (2014).

<sup>68</sup> 2007 Pilot Program Selection Order, 22 FCC Rcd at 20412, ¶ 100; 47 C.F.R. §§ 54.603(a), 54.615(a).

<sup>69</sup> 2007 Pilot Program Selection Order, 22 FCC Rcd at 20412, ¶ 100.

<sup>70</sup> See 2007 Pilot Program Selection Order, 22 FCC Rcd at 20405, ¶ 86, n.281; USAC Audit at 21.



paid or unpaid, who aided in the preparation of their Pilot Program applications.”<sup>71</sup> These “competitive bidding requirements ensure that selected participants are aware of the most cost-effective method of providing service and ensures that universal service funds are used wisely and efficiently, thereby providing safeguards to protect against waste, fraud, and abuse.”<sup>72</sup> They further ensure that “universal service support does not disadvantage one provider over another, or unfairly favor or disfavor one technology over the other.”<sup>73</sup>

The IRHTP has not violated any of these competitive bidding rules or the orders addressing the Commission’s competitive bidding policies, and neither have the vendors that USAC has targeted for recoupment.<sup>74</sup> Critically, the Commission’s rules and policy guidance are devoid of any factual discussion as to what constitutes “sufficient” or “insufficient” controls. Simply concluding that there were not “sufficient controls” in place without grounding it in specific, public guidance contained in the Commission’s rules fails to provide IRHTP with the information it needs to defend its reasonable interpretation of the FCC rules and policies to its actions.

Second, the critical area for review by USAC in this appeal is whether, based on a correct understanding of the operative facts, there were adequate screening controls set in place by the IRHTP as to each of the relevant parties for each particular service or funding request as to each of the RFPs.<sup>75</sup> In the related context of the Schools and Libraries Universal Service support program, the Wireline Competition Bureau (“Bureau”) has stated that when evaluating potential improper vendor involvement, USAC should perform a nuanced factual inquiry and determine the service provider’s involvement for each particular service.<sup>76</sup> USAC must then “deny only those funding

<sup>71</sup> 2007 Pilot Program Selection Order, 22 FCC Rcd at 20415, ¶ 104.

<sup>72</sup> 2007 Pilot Program Selection Order, 22 FCC Rcd at 20414, ¶ 102. See also *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, 9133, ¶ 686 (1997) (“Consistent with the Joint Board’s recommendation for eligible schools and libraries, we conclude that eligible health care providers shall be required to seek competitive bids for all services eligible for support pursuant to section 254(h) by submitting their bona fide requests for services to the Administrator.”)

<sup>73</sup> 2007 Pilot Program Selection Order, 22 FCC Rcd at 20414, ¶ 102; Federal Communications Commission, *Pilot Program: Frequently Asked Questions and Answers*, <http://www.fcc.gov/encyclopedia/rural-health-care-pilot-program#faq18> (last visited July 6, 2015). See also *Federal-State Joint Board on Universal Service*, 12 FCC Rcd at 9133, ¶ 686.

<sup>74</sup> As previously stated, while the IRHTP realizes that Mr. Spies’ initial written disclosures to USAC regarding the Outside Fiber RFP could have been more complete, Mr. Spies did disclose Mr. Crandell’s participation verbally throughout the process.

<sup>75</sup> The IRHTP’s screening controls were overseen by Mr. Spies, based on his good faith interpretation of the Commission’s rules and policies. Mr. Spies is not a lawyer, but he did have discussions with USAC staff about the controls he put in place to safeguard the competitive bidding process and he took the advice he was given.

<sup>76</sup> See *Greeley*, 28 FCC Rcd at 6901 (“We recognize that . . . the Bureau previously interpreted the *MasterMind Order* to conclude that, if the competitive bidding process tied to a particular FCC Form 470 was found to be tainted by improper service provider involvement, all funding request numbers associated with that FCC Form 470 would be denied funding. However, upon further consideration, we think the



requests where the company actually participated in the bidding process.”<sup>77</sup> In one case, the Bureau granted review where an employee of a service provider performed work for the school or district but did not bid on the associated funding requests.<sup>78</sup> In support of its decision, the Bureau explained that “[w]hen an applicant seeks bids on multiple funding requests as part of an application, improper service provider involvement during the competitive bidding process by one service provider does not indicate a violation on the part of every vendor selected to provide services arising from the same FCC Form 470 [the request for services form].”<sup>79</sup> Accordingly, the Bureau directed USAC to discontinue recovery actions.<sup>80</sup>

Here too USAC must examine closely the factual circumstances surrounding the involvement of each of the relevant parties for each particular service or funding request as to each of the RFPs and award determinations for which recoupment is sought. Once USAC undertakes this review, it will be obvious that IRHTP has “sufficiently demonstrate[d]” that “sufficient controls were in place ensuring that ICN and AIS were not provided a competitive advantage when the companies submitted their own bids for certain RFPs.”<sup>81</sup> While perhaps USAC would like to have more documentation of the IRHTP’s “arm’s-length” controls, nothing about them as put into practice fails the Commission’s “arm’s-length” requirements. To the extent that USAC seeks additional documentation, IRHTP offers the affidavits of all the involved parties explaining how the process as to each RFP and award actually worked. The additional clarifying information that IRHTP submits with this appeal, as well as the discussion of the specific protocols that were followed as to each relevant party in connection with each RFP, should resolve any apparent remaining confusion regarding IRHTP’s screening procedures as applied to the relevant RFPs, and make it plain that no vendors were provided any unfair advantage with regard to the RFPs on which they bid and were awarded contracts.

#### A. QA Services RFP-1

There is no question that Mr. Crandell and his company, AIS, were effectively screened from any communication that could have provided AIS with an unfair advantage in the bidding process for quality assurance services.

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better reading . . . is that USAC should determine whether the contact person’s company actually participated in the bidding for a particular service or not and deny only those funding requests where the company actually participated in the bidding process. When an applicant seeks bids on multiple funding requests as part of an application, improper service provider involvement during the competitive bidding process by one service provider does not indicate a violation on the part of every vendor selected to provide services arising from the same FCC Form 470”). The Bureau noted in a footnote that “USAC’s current procedures are consistent with this interpretation of the *MasterMind Order*.” See *id.* n.16.

<sup>77</sup> See *id.* at 6900–6901.

<sup>78</sup> See *id.*

<sup>79</sup> See *id.* at 6901.

<sup>80</sup> See *id.*

<sup>81</sup> See USAC Audit at 25.



IRHTP first learned of AIS' interest in competing for quality assurance services when Mr. Crandell expressed interest to that effect shortly after the Outside Fiber RFP process concluded.<sup>82</sup> Mr. Spies discussed Mr. Crandell's inquiry with the USAC Coach, Ms. Sheldon, and Ms. Sheldon did not see a problem with AIS bidding as long as Mr. Crandell did not assist the IRHTP in drafting the RFP, which as Mr. Crandell has attested, he did not do.<sup>83</sup> In connection with this inquiry, Ms. Sheldon was made aware of AIS' relationship with ICN as well as Mr. Crandell's relevant professional experience.<sup>84</sup>

Accordingly, "[b]etween November 2008 when the IRHTP Steering Committee rejected all bids for the quality assurance component of the Outside Fiber RFP and when [the QA Services RFP-1] was issued and bids received, there was no communication between [Mr.] Crandell and [Mr.] Swanson or [Mr. Spies] regarding the [QA Services RFP-1]."<sup>85</sup> Mr. Crandell did not discuss the QA Services RFP-1 with any other employee of the ICN either.<sup>86</sup>

The QA Services RFP was drafted by Mr. Swanson,<sup>87</sup> reviewed by Mr. Spies<sup>88</sup> and after that was approved by the IRHTP Steering Committee, during a call in which Mr. Crandell did not participate.<sup>89</sup> Further, Mr. Crandell was excluded from the meeting where the bids that were received were reviewed.<sup>90</sup>

Mr. Spies has provided USAC with information as to how the bids for QA Services RFP-1 were scored. Following Mr. Spies' recommendation to the IRHTP Steering Committee to award the contract to AIS, which submitted the most cost-effective bid,<sup>91</sup> the IRHTP Steering Committee voted by email on awarding the contract to AIS.<sup>92</sup> Mr. Crandell was once again excluded from all these communications. In this way, Mr. Crandell was entirely screened from the development of the QA Services RFPs, the evaluation of the bids and the ultimate award of the first QA Services contract to

<sup>82</sup> See Crandell Aff. at 3; Spies Aff. at 1.

<sup>83</sup> Crandell Aff. at 3.

<sup>84</sup> Crandell Aff. at 3.

<sup>85</sup> Spies Aff. at 1.

<sup>86</sup> Crandell Aff. at 4. See also Lumbard Aff. at 3 ("Except to the extent necessary to carry out discrete assignments, neither ICN nor Mr. Crandell have any right, expectation, or practice of sharing information.").

<sup>87</sup> See Spies Aff. at 1. See also IRHTP Response to USAC Audit Findings, Disclosures Supporting Documentation, Memorandum from Arthur Spies, IRHTP, to Barbara Sheldon, USAC, "Use of Vendors as Consultants and Project Funding for QA Inspection Services RFP 002" (June 29, 2009) (Attachment 8D).

<sup>88</sup> See Spies Aff. at 1.

<sup>89</sup> Minutes of IRHTP Steering Committee Conference Call, May 14, 2009, at 1.

<sup>90</sup> Spies Aff. at 1.

<sup>91</sup> See Sept. 16, 2009 QA Services Memorandum.

<sup>92</sup> See IRHTP Response to USAC Audit Findings, Quality Assurance Supporting Documentation, E-Mails from IRHTP Steering Committee to Arthur Spies regarding IRHTP QA Inspection Services Contract Award (Sept. 16-19, 2009) ("Sept. 16-19, 2009 E-Mails") (Attachment 8C).

AIS,<sup>93</sup> preventing him from having an unfair competitive advantage in connection with the QA Services RFP-1.

## **B. QA Services RFP-2**

The same effective controls were in place in connection with the QA Services RFP-2.

When, later on, “a few hospitals that had previously declined to participate [in the] program sought to be included and participation agreements on the projects were completed . . . the additional service had to be competitively bid.”<sup>94</sup> Mr. Swanson and Mr. Spies recognized that AIS “would likely bid on the additional sites.”<sup>95</sup> Thus, consistent with the previous conversation between Mr. Spies and USAC Coach Ms. Sheldon and the procedures followed for the QA Services RFP-1, Mr. Crandell “was again excluded from the RFP process.”<sup>96</sup> Mr. Swanson developed the QA Services RFP-2<sup>97</sup> without any assistance on the part of Mr. Crandell.<sup>98</sup> Perhaps given the small size of the project and its nature as a fixed fee bid, AIS was the only entity to submit a bid.<sup>99</sup> Once AIS’ bid was received, Mr. Crandell was excluded from its evaluation<sup>100</sup> and the IRHTP Steering Committee’s decision-making process in determining to award that contract to AIS. While the June 21, 2012 memorandum to the IRHTP shows Mr. Crandell as having participated in a conference call where a variety of items were on the agenda, Mr. Crandell was in no way involved in the determination to award the QA Services RFP-2 contract to AIS.<sup>101</sup>

The fact that Mr. Crandell and AIS were consistently excluded from every step of the process is evident and the outcome of the QA Services RFP-2 process further supports a finding that the IRHTP’s screening protocols were “sufficient.” AIS presented a bid with a cost-per-site burdened hourly rate for the second QA Services RFP that was identical to the one submitted in response to the first QA Services RFP.<sup>102</sup> This, “[d]espite the time between the RFPs and the likelihood that few if any other companies would bid on such a small project.”<sup>103</sup> IRHTP ended up with the most cost-effective means of receiving services without any unjust enrichment, fraud, or waste to the Pilot

<sup>93</sup> See Spies Aff. at 1–2; Crandell Aff. at 4–5. See also Sept. 16–19, 2009 E-Mails.

<sup>94</sup> Spies Aff. at 2.

<sup>95</sup> Spies Aff. at 2.

<sup>96</sup> See Spies Aff. at 2. See also Crandell Aff. at 4–5.

<sup>97</sup> IRHTP Response to USAC Audit Findings, Disclosures Supporting Documentation, Memorandum from Arthur Spies, IRHTP, to Barbara Sheldon, USAC, “Disclosures” (Apr. 27, 2012) (Attachment 8D).

<sup>98</sup> Crandell Aff. at 3–4.

<sup>99</sup> See Spies Aff. at 2; June 21, 2012 QA Services RFP-2 Scoring Memorandum.

<sup>100</sup> See Crandell Aff. at 5.

<sup>101</sup> Curtis Aff. at 1, 3–4.

<sup>102</sup> See June 21, 2012 QA Services RFP-2 Scoring Memorandum. See also Spies Aff. at 2; Crandell Aff. at 5.

<sup>103</sup> Spies Aff. at 2.



Program and no failure to adhere to the “arm’s-length” requirements of the Commission’s competitive bidding rules and published policies.

### C. Connectivity RFP

Appropriate “arm’s-length” controls were also in place with regard to the Connectivity RFP.

Since it was “obvious and expected that the ICN would be among the potential bidders” for the RFP given that ICN is the only statewide fiber optic network in a position to have points of presence in 99 Iowa counties, Mr. Swanson of ICN “and any other ICN employee[,] w[ere] excluded from the development of the RFP.”<sup>104</sup> In fact, ICN and Mr. Crandell and his company, AIS, did not have any conversations relating to the Connectivity RFP while it was being drafted or while a decision was pending.<sup>105</sup> Mr. Crandell developed and drafted the Connectivity RFP under IRHTP supervision<sup>106</sup> to “reflect the requirements for the network to function as proposed by the IRHTP project and the previous build-out and nothing more.”<sup>107</sup> None of Mr. Crandell’s work on this RFP was performed as an ICN contractor.<sup>108</sup> The Connectivity RFP was reviewed by Mr. Spies and discussed at the IRHTP Steering Committee.<sup>109</sup>

As USAC knows, only ICN submitted a bid in response to the Connectivity RFP. This is not surprising and certainly not any indication of a competitive bidding issue. ICN was uniquely in the best position to provide this service because of its unmatched fiber network reach. The ICN is a non-profit, state owned and operated entity and is the only provider with a statewide reach throughout Iowa. Its status as a public entity with a mission to develop a comprehensive statewide network for telehealth services is unique.<sup>110</sup> In order for any other vendor to compete effectively for the Connectivity RFP award, it would either have to build out using a range of existing networks or collaborate

<sup>104</sup> See Spies Aff. at 4.

<sup>105</sup> Crandell Aff. at 5–6. The apparent misunderstanding regarding Mr. Crandell’s relationship with ICN has been addressed in depth previously. Mr. Crandell and his company, AIS, were and are not consultants to ICN as defined by USAC. See USAC, Rural Health Care Program, *Glossary of Terms*, <http://www.usac.org/res/documents/rhc/pdf/handouts/RHC-Glossary-of-Terms.pdf> (last visited July 6, 2015). He is also not an employee under the terms of the contract with ICN. Crandell Aff. at 1–2. Mr. Crandell has never exercised any control or influence over ICN. See Crandell Aff. at 6. Neither did Mr. Swanson’s work with the ICN. As Mr. Swanson attested, the “ICN would have submitted the same bid at the same rates if I had never had any association with the IRHTP.” Swanson Aff. at 2. Moreover, his work for ICN did not influence the drafting or the evaluation of the RFPs with which he was involved. See Crandell Aff. at 6.

<sup>106</sup> See April 19, 2012 Memorandum; Spies Aff. at 4.

<sup>107</sup> See Spies Aff. at 4.

<sup>108</sup> Crandell Aff. at 5.

<sup>109</sup> See April 19, 2012 Memorandum; Spies Aff. at 4–5; May 29, 2012 Conference Call Summary.

<sup>110</sup> See Iowa Code § 8D.13(15) (2015) (“Access shall be offered to hospitals licensed pursuant to chapter 135B and physician clinics for diagnostic, clinical, consultative, data, and educational services for the purpose of developing a comprehensive, statewide telemedicine network . . .”).



with other entities to provide connectivity service to 88 points of presence located all throughout the state.

It is undisputed that ICN's bid was for connectivity using ICN's customary publicly available rates.<sup>111</sup> Given that the ICN's rates are published and publicly available, the fact that no other entity chose to respond to the Connectivity RFP merely shows that no other entity or group of entities believed themselves to be in a position to provide rural broadband connections where needed at a rate lower than the published rate that ICN offered in its bid response. As USAC itself recognized, the outcome of the competitive bidding process for the Connectivity RFP does not suggest any irregularities:<sup>112</sup> in fact, "no result other than the selection of ICN would have been economically and technically rational."<sup>113</sup>

Mr. Crandell had no role in developing ICN's responses to this (or any other) IRHTP RFP.<sup>114</sup> A team including Mr. Crandell and Mr. Spies evaluated the Connectivity RFP bid based on the objective factors outlined in the RFP.<sup>115</sup> ICN was in no way involved in this process<sup>116</sup> and did not attempt to influence the way Mr. Crandell (or anyone else) developed or evaluated the ICN bid.<sup>117</sup> The IRHTP Steering Committee reviewed and approved the ICN bid, again without the involvement of ICN or ICN employees.<sup>118</sup> While the May 29, 2012 memorandum shows Mr. Swanson as participating in the IRHTP Steering Committee call where, among other business, the contract was awarded, Mr. Swanson was in no way involved in the determination to award the Connectivity RFP to ICN.<sup>119</sup> Voting for both the IRHTP Steering Committee and the later IRHTP Board is reserved for hospital representatives only.<sup>120</sup>

<sup>111</sup> Swanson Aff. at 2; Lumbard Aff. at 2.

<sup>112</sup> See USAC Audit at 25 ("(a) the Beneficiary competitively bid the Ethernet services and ICN was the only bidder under the procurement; (b) ICN was uniquely situated to provide the most expansive network and services along with the best rates as the State of Iowa's fiber optic network; (c) ICN already possessed sufficient knowledge of the network's current topology and configuration as the preexisting Ethernet services provider to HCPs participating in the project; and (d) no result other than the selection of ICN would have been economically and technically rational. . .").

<sup>113</sup> USAC Audit at 25.

<sup>114</sup> Lumbard Aff. at 2. See also Crandell Aff. at 5-6. Dave Lingren, Executive Director of the ICN, and Philip Groner, Manager of Business Services, signed all of the ICN RFP response pages. See ICN Response to IRHTP RFP 12-005 at Annexes A and B (May 25, 2012) (Attachment 16).

<sup>115</sup> See Notice to Vendors, Request for Proposal IRHTP RFP 12-005, at 16 (2012) (Attachment 17). See also Spies Aff. at 4-5.

<sup>116</sup> See IRHTP Response to USAC Audit Findings, Disclosures Supporting Documentation, Memorandum from Arthur Spies, IRHTP, to USAC/FCC, "Evaluation, Scoring, and Award for IRHTP RFP 12-005 (June 7, 2012) (Attachment 8D).

<sup>117</sup> Crandell Aff. at 6.

<sup>118</sup> See May 29, 2012 Conference Call Summary; Curtis Aff. at 4.

<sup>119</sup> Curtis Aff. at 4.

<sup>120</sup> The voting members of the IRHTP Steering Committee during the relevant period were: Scott Curtis, Mike Myers, Daryl Bouma, David Hickman, Fred Eastman, Jim Burkett, Joe LaValley, Kim Norby, Lee Carmen, Martin Blind, Rob Frieden, Mike Trachta, Randy Haskins, and Steve Baumert. Curtis Aff. at 1.



In conclusion, the IRHTP's screening protocols ensured that there was no improper influence or competitive advantage conferred on any bidder during development of the request for proposal, bidding, or the award process. Bids were awarded based on the most cost-effective terms offered by providers with relevant capabilities and expertise and nothing else.<sup>121</sup> The IRHTP's practices were designed to provide the "arm's-length" distance as to vendors and resulted in no unjust enrichment, fraud, or waste to the program.

In light of these showings, USAC's decision to seek recovery in the absence of a rule or published guidance inconsistent with the IRHTP's screening procedures is both arbitrary and inequitable. It is arbitrary because each and every person who could have tainted the competitive bidding process as to each RFP was successfully screened, and the outcome of each of the bidding processes under review here supports this finding. It is inequitable because there was no hidden agenda, no manipulation of the outcome of any award, and no purposeful obfuscation of any relevant facts. Mr. Spies' constant communication with USAC Coach Ms. Sheldon further underscores the IRHTP's good faith efforts to comply with the Commission's "arm's-length" requirements.

USAC cannot show that as a result of the IRHTP's controls and screening protocols the process was in any way skewed or the outcomes undermined the competitive bidding policies and objectives. On their face, the facts simply do not support a finding of any competitive bidding violation as to the relevant FRNs. For USAC to conclude otherwise and state that the IRHTP failed to meet the letter of stated Commission rules and policies would mean that USAC has disregarded the IRHTP's, the AIS' and the ICN's submissions and related affidavits, and made an independent judgment about the relationships and the facts that is unsupported by the record on appeal. Given that the outcome of the QA Services and the Connectivity RFPs was consistent with having had effective screening protocols in place, such an unsupported independent judgment—and the accompanying recoupment action for over half a million dollars from IRHTP's vendors—would be entirely at odds with the public policy goals the Commission seeks to further by imposing competitive bidding requirements. Accordingly, USAC's determination as to FRNs 64723, 68296, 41446, and 63145 must be reversed.

#### IV. CONCLUSION

For the foregoing reasons, the IRHTP hereby requests that USAC review the submitted materials and reverse its decision to recover funds in connection with FRNs 64723, 68296, 41446, and 63145.

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<sup>121</sup> See Spies Aff. at 1–5.

Respectfully submitted,

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**Supporting Documents:**

ATTACHMENT	DOCUMENT
1.	Letter from Rural Health Care Division, USAC, to Angela Schneider, Iowa Communications Network (May 6, 2015)
2.	Letter from Rural Health Care Division, USAC, to Tony Crandell, Access Integration Specialists (May 6, 2015)
3.	USAC Independent Auditor's Report on Iowa Rural Health Telecommunications Program's Compliance with Rural Health Care Pilot Program Rules (USAC Audit No. RH2013PP018) (Sept. 5, 2014)
4.	IRHTP Letter of Appeal (June 29, 2015)
5.	Affidavit of Anthony Crandell (June 29, 2015)
6.	Notice to Vendors, Request for Proposal IRHTP RFP 09-002 (2009)
7.	Notice to Vendors, Request for Proposal IRHTP RFP 08-001 (2008)
8.	IRHTP Response to USAC Audit Findings and Supporting Documentation <ul style="list-style-type: none"> <li>A. Affidavit of Arthur Spies (Oct. 3, 2014)</li> <li>B. Memoranda and Emails regarding Connectivity Services, including: <ul style="list-style-type: none"> <li>• Minutes of IRHTP Steering Committee Conference Call, May 14, 2009</li> <li>• Memorandum from Arthur Spies to IRHTP Steering Committee, "May 29, 2012 Conference Call Summary," (May 29, 2012)</li> <li>• Memorandum from Arthur Spies, IRHTP, to IRHTP</li> </ul> </li> </ul>



	<p>Steering Committee, "Evaluation Scoring IRHTP [FRNs 64723 and 68296 (USAC RFP #04)] Meshed Ethernet Bandwidth and Connectivity Proposal" (May 29, 2012)</p> <p>C. Memoranda and Emails regarding Quality Assurance, including:</p> <ul style="list-style-type: none"> <li>• Memorandum from Arthur Spies to IRHTP Steering Committee, "June 20, 2012 Conference Call Summary" (June 21, 2012)</li> <li>• Memorandum from Arthur Spies, IRHTP, to FCC/USAC, "Evaluation, Scoring and Awards for IRHTP RFP 12-004" (June 21, 2012)</li> <li>• Memorandum from Arthur Spies, IRHTP, to IRHTP Steering Committee, "Evaluation, Scoring QA Inspection Proposals" (Sept. 16, 2009)</li> <li>• E-Mails from IRHTP Steering Committee to Arthur Spies regarding IRHTP QA Inspection Services Contract Award (Sept. 16-19, 2009)</li> </ul> <p>D. Disclosure Memoranda, including:</p> <ul style="list-style-type: none"> <li>• Memorandum from Arthur Spies, IRHTP, to Barbara Sheldon, USAC, "Disclosures" (April 19, 2012)</li> <li>• Memorandum from Arthur Spies, IRHTP, to Barbara Sheldon, USAC, "Disclosures" (April 27, 2012).</li> <li>• Memorandum from Arthur Spies, IRHTP, to USAC/FCC, "Evaluation, Scoring, and Award for IRHTP RFP 12-005 (June 7, 2012)</li> <li>• Memorandum from Arthur Spies, IRHTP, to USAC/FCC, "Evaluation, Scoring and Award for IRHTP RFP 10-001" (Apr. 11, 2011)</li> <li>• Memorandum from Arthur Spies, IRHTP, to Barbara Sheldon, USAC, "Use of Vendors as Consultants and Project Funding for QA Inspection Services RFP 002" (Jun. 29, 2009)</li> </ul>
9.	Minutes of IRHTP Steering Committee, Nov. 12, 2008
10.	Affidavit of Scott Curtis (July 6, 2015)
11.	E-Mail from Arthur Spies, IRHTP, to Lee Fintel, Adesta LLC (July 8, 2009)
12.	E-Mail from Joel Mulder, Adesta LLC, to Arthur Spies, IRHTP (July 8, 2009)
13.	Memorandum from Arthur Spies, IRHTP, to USAC Internal Auditors, "Responses to Competitive Bidding Process Questions" (Mar. 11, 2014)
14.	Affidavit of Ric Lumbard (July 1, 2015)

15.	Affidavit of David Swanson (July 1, 2015)
16.	ICN Response to IRHTP RFP 12-005 (May 25, 2012)
17.	Notice to Vendors, Request for Proposal, IRHTP 12-005 (USAC RFP #04) (2012)